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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/690,473	10/18/2000	Brett Haarala	06530-0020	1891

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EXAMINER

HAYES, MICHAEL J

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 06/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/690,473

Applicant(s)

HAARALA ET AL. *CH*

Examiner

Michael J Hayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11, 12, 23-27, 35-42 and 44-59 is/are pending in the application.
- 4a) Of the above claim(s) 23-27, 35-42 and 44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11, 12 and 45-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11, 12, 45, 46, 47, 48, 49, 52, 53, 56, and 57 are rejected under 35 U.S.C. 102(b) as being anticipated by MITTLEMAN (U. S. Patent No. 4,000,740). Mittleman discloses an access port including upper and lower 12 body portions, a guidewire entry site 16 sealed with a septum 26, and an access site 42. Mittleman discloses the access site orientated perpendicular to guidewire site and the outlet because the site is placed perpendicular to an axis line drawn between the guidewire site and the outlet.

Claims 48-50, 52-54, and 56-58 are rejected under 35 U.S.C. 102(b) as being anticipated by HANCOCK et al. (U. S. Patent No. 4,840,615). Hancock discloses an access port having upper and lower bodies, an outlet for attaching a catheter, guidewire and access sites located throughout a common septum, whereas the guidewire and access sites include perpendicular sites to each other or to the outlet.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 51, 55, and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over MITTLEMAN as applied to claims 11, 12, and 45 above, and further in view of McPHERSON (U. S. Patent No. 5,281,205). Mittleman discloses the claimed invention except for a suture hole in the upper body. McPherson teaches suture holes in the upper body of a port device to anchor the device to a patient (4:11-13). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the suture holes as taught by McPherson in order to keep the device from detaching from a patient.

Claims 50, 54, and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mittleman in view of SPECKMAN et al. (U. S. Patent No. 5,792,104). Mittleman discloses the claimed invention and several septa to allow access to the reservoir (Figs. 3-7). Speckman teaches the use of one septum for a plurality of ports. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teaching of Speckman in the invention of Mittleman to make several parts integral and reduce manufacturing costs.

Response to Arguments

Applicant generally argues that the term "access port" has art-recognized meaning as a device that is implanted in a patient and that Mittleman does not disclose a device configured to be implanted. The examiner disagrees for several reasons. Applicant states that there is an art-recognized meaning for access port but supplies no evidence for such an assertion. Even Applicant supplies evidence that the term "access port" has an art-recognized meaning, Applicant has not pointed to any structure that distinguishes an access-port from the device

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disclosed by Mittleman. Lacking structural differences, Applicant relies on his disclosure of using the device differently than disclosed by Mittleman, but this does not carry patentable weight. Where the prior art discloses the claimed structural limitations and an invention merely recites a new use for old structure the claimed invention is anticipated.


Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Hayes at (703) 305-5873. The examiner can usually be reached Monday -Thursday, 7:00-4:30, and on alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler, can be contacted at (703) 308-3552. The fax number for submitting official papers is (703) 872-9302. The fax number for submitting after final papers is (703) 872-9303.

mjh
12 June 2002


MICHAEL J. HAYES
PRIMARY EXAMINER